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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 637

JAMES GORDON STEADMAN,

Petitioner,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

JULIAN S. WOLFE,
Orangeburg, S. C.;
J. WESLEY CRUM,
Denmark, S. C.;
THOS. M. BOULWARE,
Allendale, S. C.,
Counsel for Petitioner.

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ATLANTIC COAST LINE RAILROAD COMPANY
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, James Gordon Steadman, a citizen of the United States residing in Bamberg County, in the State of South Carolina, respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered November 12, 1943, in the suit at law, entitled No. 5105, James Gordon Steadman, Appellant, versus Atlantic Coast Line Railroad Company, Respondent.

Summary and Short Statement of the Matter Involved.

Petitioner filed his suit here involved against the respondent railroad company to recover damages for loss of salary in excess of Three Thousand Dollars for the

breach of a written contract of employment. Petitioner was a railroad telegraph operator and the contract involved is the contract between the railroad and the labor union of which petitioner was a member. The applicable portions of the contract were set forth in the complaint, and the particular breaches alleged were the failure of the railroad to give him the position of clerk-telegrapher at Orangeburg, S. C., for which he had applied, and to which he was entitled by seniority by virtue of said contract, and in subsequently striking his name from the seniority roster; petitioner having served said railroad in the capacity of a telegraph operator for more than thirty-four years and since he was nineteen years of age.

The suit was first filed in the South Carolina State Court, but was removed upon petition of respondent upon the ground of diversity of citizenship.

Two issues raised by the answer were before the District Court upon the trial of the case: first, was plaintiff so handicapped by the loss of his left arm between the elbow and wrist, he being right handed, as to render him incapable of performing the duties of the position at Orangeburg; second, was the pursuit of the remedies provided in Article 18(a) and (b) of the labor union contract, a prerequisite to a suit for breach of the contract? Out of the first of these issues grew another, as to whether the decision of the Superintendent of the Railroad, Mr. Hare, that petitioner was not fitted for the Orangeburg position, was final and barred petitioner from a trial by the jury as to the issue of his fitness for the place.

The District Judge decided all of these questions adversely to petitioner and directed a verdict for the railroad, although admitting that "some testimony was introduced to show that a one armed man can act as telegrapher and agent for the railroad company" (R. p. 48), and in spite of

ample undisputed testimony on behalf of petitioner that other one armed telegraph operators, more crippled than he, held positions with railroads requiring similar work, and testimony by petitioner that he knew the work of the position at Orangeburg, that he could do it, and how he could meet the difficulties brought about by the loss of his hand. Petitioner's position being that he had proved his fitness for the position by the best evidence the nature of his case permitted, and that said testimony raised a direct conflict of evidence on the question of his fitness for the Orangeburg position, and consequently the Court was required by the VIIth Amendment to the Constitution of the United States and the case of *Pennsylvania Railroad Company* v. *Chamberlain*, 288 U. S. 333, 77 L. Ed. 819, to submit the question of his fitness to the jury.

From said judgment, petitioner appealed to the United States Circuit Court of Appeals for the Fourth Circuit, which Court by its opinion filed November 12, 1943, affirmed said judgment, although upholding petitioner's contentions that the pursuit of the remedies provided in Article 18(a) and (b) of the labor union contract, was not a prerequisite to a suit for the breach of the contract, and that the decision of Mr. Hare, the Superintendent, that petitioner was not fitted for the Orangeburg position, was not final. The Circuit Court of Appeals did not pass upon the question raised by petitioner, that there was a direct conflict of testimony and evidence on the question of his fitness for the Orangeburg position, and that the Court was required by the Constitution and the case of *Pennsylvania Railroad Company* v. *Chamberlain, supra*, to submit the question of his fitness to the jury. The Circuit Court of Appeals, as we understand its opinion, held that in an action for breach of a labor union contract, an employee must prove that the action of the railroad in breaching

the contract was *arbitrary or in bad faith*, and that *the one fact* that petitioner had not had the decision of the Superintendent reviewed under the machinery of the contract, which the Court admitted was not mandatory, was conclusive evidence that the contract had not been breached *arbitrarily or in bad faith* by the Superintendent, and hence was of itself sufficient to take the question of plaintiff's fitness for the position from the jury.

Articles 18(a) and (b) of the Contract above referred to, are as follows:

> Article 18(a). "Employes will not be suspended without just cause, and will not be discharged without an investigation should they request it."
>
> Article 18(b). "An employe disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided, written request is presented to his immediate superior within ten (10) days of the date of the advice of discipline, and the hearing shall be granted within ten (10) days thereafter."

Basis of Jurisdiction of Supreme Court.

Section 240 (a) of the Judicial Code, as amended by the Act of Congress of February 13, 1925, 43 Stats. 936, defining the jurisdiction of the Supreme Court of the United States, provides that in any case in the Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by Certiorari that the cause be certified to the Supreme Court. Subsection 8(a) of said Section 240 provides that application for said writ may be filed within three months after entry of the judgment, and that for good cause said time may be extended not exceeding sixty days by a Justice of said Court.

The decision of the Circuit Court of Appeals and the judgment rendered thereon were entered on November 12,

1943 (R. p. 60). The record in this Court shows that the petition for writ of certiorari, and the record in the form required by the Rules of Court was filed in this Court within the statutory period of three months.

The nature of the case and the rulings of the court below which are deemed to bring the case within the jurisdictional provisions relied on have been briefly set forth and stated in the summary and short statement of the matter involved which is a part of this petition for writ of certiorari.

The cases believed to sustain the jurisdiction of the court will be hereinafter referred to under the headings "Questions Presented" and "Reasons Relied On For the Allowance of the Writ."

Questions Presented.

I. Is an employee suing for breach of his seniority rights, guaranteed by a labor union contract, who has proved his fitness for the work by the only evidence which from the nature of his case it was susceptible, barred from the trial of the issue of his fitness by a jury, by the *sole* fact that he failed to have the decision of his Superintendent reviewed, as he may have done, but was not required to do by the contract?

II. Under the labor union contract herein involved, was the opinion and decision of the Railroad Superintendent, whether arbitrary or in bad faith, or not, that petitioner was not competent to do the work of the job he was entitled to by seniority, binding and conclusive upon petitioner; or did his action under that decision merely give rise to a justiciable issue in an action for damages for breach of the contract accomplished by that very decision and action?

III. Even if the issue of fact for trial in this action was merely whether or not this decision and action of the Railroad Representative was arbitrary or in bad faith; that issue being dependent wholly upon the truth of the evidence *pro* and *con* as to his competency to do the work, the Seventh Amendment to the Constitution of the United States required the trial of that issue by a jury, since both the Circuit Court of Appeals and the District Judge admit that there was such evidence *pro* and *con*.

IV. The Circuit Court of Appeals erred in holding that the breach of contract complained of by petitioner, to-wit: the refusal of the position at Orangeburg to which he was entitled by seniority, is predicated "on the exercise of a discretion which the contract permitted" the error being: in holding that the words of Rule 12-G of the contract: "Provided, that in the exercise of seniority under this article the employee is qualified to hold the position", *permits* a *discretion* on the part of the Superintendent in determining the fitness of an employee for a position, whereas, said clause should have been construed in the usual way as giving the railroad a defense to an action for breach of seniority rights under the contract, which defense is subject to proof *pro* and *con* the same as any other defense.

V. The Circuit Court of Appeals for the Fourth Circuit erred in holding that petitioner must prove in addition to breach of contract, that the breach was *in bad faith* or *arbitrary;* the error being, that such holding imposes upon an employee a greater burden in proving the breach of his seniority rights under a labor union contract, than is required to prove the breach of any other contract, and is therefore discriminatory.

Reasons Relied On for the Allowance of the Writ.

It is respectfully submitted that a question of rights, nation wide, under Labor Union contracts, is here involved, and has been decided in this case contrary to the evident opinion of the Circuit Court of Appeals for the Fifth Circuit in *Moore* v. *Illinois Central Railroad Company*, 112 F. 2d 959, 965 (C. C. A. 5th) 312 U. S. 630, and the decision of the South Carolina Supreme Court in *Johnson* v. *Express Company*, 163 S. C. 191; 161 S. E. 473. This question affecting hundreds of railroads and millions of employees, is, whether such contracts vest power (excluding recourse to the courts) in the employer's representatives to pass judgment upon the fitness of employees, which will be final and binding upon them, unless such employees can prove that such judgment was *arbitrary* or *in bad faith*, it being evident that no employee could produce evidence of such mental attitude, and that no such proof is required to prove the breach of any other form of contract.

The Constitutional right of trial by jury is set at naught by this decision, not only for petitioner, but for millions of employees under labor union contracts throughout the nation. Petitioner has the right under this Labor Union contract to the verdict of a jury on the question of whether or not he was capable of doing the work he was entitled to do by seniority, and the substitute therefor offered by the Circuit Court of Appeals of a trial thereon by a railroad representative, whether he acts arbitrarily or not, is a dangerous and unlawful substitute, contrary to the Union contract, and so far nullifies the Seventh Amendment to the Constitution of the United States guarantee of a jury trial as to call for the supervisory powers of this Court.

It is respectfully submitted that the opinion of the Circuit Court of Appeals for the Fourth Circuit in this case

holding that petitioner, a railroad employee suing for breach of a Labor Union contract must prove in addition to such breach, that the breach was in bad faith or arbitrary, is in direct conflict with the prior decision of *Moore* v. *Illinois*, 112 F. 2d 959, 965 (5th Cir.) where a Labor Union contract with similar terms was involved, where the court stated that "* * * *it would be unreasonable, without express provision to that effect, to hold that the railroad officers are the sole or the final judges of the justice of the cause.* * * *. Surely a court, enlightened by witnesses, may judge of the justice of a cause of discharge.* In case of an arbitrary discharge the union might take the matter to the management, the Adjustment Board, or even to the test of a strike. *The individual also in his individual contract of employment* may seek reinstatement with pay through the railroad's officers, or through the Adjustment Board; or he *may, before or after pursuing those remedies, acquiesce in the discharge and ask damages for the breach of contract in a court of law*" (italics ours) and is also in conflict with the South Carolina case of *Johnson* v. *Express Company*, 163 S. C. 191, 198; 161 S. E. 473, where the Court said: "the company could not discharge an employee without cause, at all, and that it could not discharge one with cause until an investigation" etc. See also the case of *Rentschler* v. *Missouri Pacific*, 95 A. R. 1; 126 Neb. 493; 253 N. W. 694, which was an action by a member of a Labor Union to recover wages by reason of his being laid off at a time when he had seniority rights above an employee who was retained.

Said opinion of the Court of Appeals in declining to follow the decision of the Supreme Court of South Carolina in the case of *Johnson* v. *Express Company*, 163 S. C. 191, 198; 161 S. E. 473, is in conflict with the decisions of the Supreme Court of the United States in *Erie Railroad*

Company v. *Tompkins*, 304 U. S. 64; 82 L. Ed. 1188, and other subsequent cases; and would produce the anomalous situation in South Carolina of an employee making out a case for the jury in the State courts by proving merely a breach of contract, or a discharge without cause, while in the Federal court he would have to prove that the discharge was arbitrary or in bad faith; which situation the case of *Erie* v. *Tompkins* was intended to remedy.

Said decision of the Circuit Court of Appeals in refusing petitioner a jury trial on the issue of his fitness for the position at Orangeburg, is in direct conflict with *Pennsylvania Railroad Company* v. *Chamberlain*, 288 U. S. 333, 77 L. Ed. 819 and the VIIth Amendment to the Constitution of the United States, in that there was undeniably, and admittedly, a conflict of the testimony and evidence on that point, as was admitted by the District Judge (R. p. 48, lines 12, 13 & 14) and the Circuit Court of Appeals (R. p. 59, lines 4 and 5).

Opinions Delivered in the Courts Below.

The ruling and opinion of the District Court of the United States for the Eastern District of South Carolina is in the record, pages 45-49, inclusive. The opinion of the Circuit Court of Appeals for the Fourth Circuit is in the record, pages 57-60, inclusive, and is also reported in *Steadman* v. *Atlantic Coast Line R. Co.*, 138 F. 2d, 691 .

Wherefore, a writ of certiorari is respectfully asked.

Julian S. Wolfe,
Orangeburg, S. C.;
J. Wesley Crum,
Denmark, S. C.,
Counsel for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1943

No. 637

JAMES GORDON STEADMAN, PETITIONER,

versus

ATLANTIC COAST LINE RAILROAD COMPANY,
RESPONDENT

ARGUMENT IN OPPOSITION TO PETITION FOR CERTIORARI

DOUGLAS McKAY,
Columbia, S. C.,
DOUGLAS McKAY, Jr.,
Columbia, S. C.,
Counsel for Respondent.

THOS. W. DAVIS,
Wilmington, N. C.,
Of Counsel.

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FACTS

The succinct statements of facts in the order of the District Judge refusing motion to set aside the directed verdict and for new trial (Transcript of Record, page 46), and in the decision of the Circuit Court of Appeals, Fourth Circuit, affirming the finding below (138 F. (2d), 691, 692) (Transcript of Record, pages 57-59, folio 53), are not questioned. With these before the Court, we deem it unnecessary again to recount the details.

ARGUMENT

The trial Court and the appellate Court below have both found that the petitioner Steadman has failed to sustain the allegations of his complaint, and to show that the respondent, Atlantic Coast Line Railroad Company, has breached the agreement between it and the Order of Railroad Telegraphers, of which the petitioner as a member of the order was a beneficiary.

The gist of plaintiff's complaint is that in refusing in January, 1939, to give him the position of clerk-telegrapher at Orangeburg, S. C., the respondent "after demand therefor" refused him "a fair and impartial hearing as to whether or not he was qualified and fitted" for that position. The complaint further sets forth that the defendant "arbitrarily and without cause" refused him this position, and on the alleged violation of the union contract he grounds his case. (Transcript of Record, page 4 of Complaint, Paragraph 6.) He now seeks by petition for certiorari to this Court a review of the judgment rendered against him below.

(A) Failure to Afford Hearing Provided for Under the Brotherhood Agreement.

The record will be searched in vain for any evidence to sustain this allegation of the complaint. When this position was refused petitioner in January, 1939, he had the right under the contract, which is the subject of his action, to present a written request for a hearing to his immediate superior within ten (10) days, and within ten (10) days thereafter would have been entitled to have such request granted. (Transcript of Record, page 6, Article 18 (b).) The fact is that he made no such request either verbally or in writing at any time; and the first evidence the respondent had that Steadman considered that his contractual rights

had been violated was the filing of this cause of action in August, 1942. We respectfully submit that his failure to pursue the administrative remedies available to him under this contract, or in any way to protest the decision of the respondent that he was not fitted to fill the job at Orangeburg, gives rise to the reasonable inference that petitioner himself did not believe the decision was unjust. The record discloses that in December, 1938, the petitioner had filed his application for benefits with the proper board to administer the Federal Railroad Retirement Act, and was necessarily holding himself out as totally disabled in order to qualify for the benefits under that Act. *McCarthy v. Palmer*, 29 Fed. Supp., 585. And, in fact, more than four months after the Orangeburg job had been denied him, he sought to have the superintendent of the railroad company swear: "That deponent does not know of any position with the railroad company which Mr. Steadman is capable of handling at the present time and does not believe that he will ever be able and in condition to be re-employed by the Atlantic Coast Line Railroad Company." (Transcript of Record, pages 43-54, Exhibit "15".)

In the Courts below, petitioner's counsel, to sustain their contention that a demand was made for an hearing to consider his fitness for the Orangeburg job, relied solely upon a letter written **18th April, 1939**, by petitioner to R. B. Hare (superintendent) and Dr. W. J. Lancaster, Medical Director of the Atlantic Coast Line Railroad Company (Transcript of Record, page 51, Exhibit "A"). It will be observed that this letter was written many weeks after the time provided in the union contract for an hearing or review of the Orangeburg decision; that it in nowise protested that decision but apparently acquiesces therein; and that it was in reality an appeal for support of the petitioner's claim for railroad retirement benefits, which in the

first stages of his application therefor had been denied on the ground that he was under 60 years of age. Incidentally, Steadman continued to press his claim, based on the ground of total and permanent disability, until its final denial on 8th July, 1940 (Transcript of Record, page 2, folio 3). And in connection with this claim and with no bearing on the issues here, the record discloses that several examinations were made by the railroad physicians at its Rocky Mount hospital, the results of which were sought by the Railroad Retirement Board in passing on the claim. The record also discloses that there were other positions, minor in character, to the important one at Orangeburg, that in the opinion of the railroad superintendent Steadman was qualified to fill, but he made no application therefor (Transcript of Record, Hare, pages 38, 43).

As has hitherto been stated, we respectfully submit there is nothing in the record to sustain any contention that Steadman was denied any hearing to which he was entitled under the union contract.

(B) Refusal to Award Steadman the Orangeburg Job Was Neither Arbitrary Nor Without Reasonable Foundation.

The trial Court and the appellate Court below both found that as a matter of fact there was nothing unreasonable or arbitrary in refusing to place the petitioner in the important and exacting position of clerk-telegrapher at Orangeburg.

As to any evidence of **bad faith** or **arbitrary decision,** we submit the facts Hare was faced with when the question of Steadman's qualifications was presented. **In the first place,** the job sought demanded varied activities requiring an high degree of efficiency in the preparation and handling of telegraphic train orders, delivering a varying number of

same to trainmen on moving trains while signalling with a lantern, the sale of tickets, handling change, checking baggage and making out baggage manifests and carbon copies of practically everything, etc. A failure to perform such duties with ability and dispatch was fraught with confusion and delay, and in some particulars with grave danger, imperilling lives and property. **In the second place,** here was an applicant for this position—a man well up in his fifties —who a short time before had lost his left arm below the elbow, and who had done no work since the amputation. All the superintendent had to go on was that Steadman was maimed, and, we submit, he reasonably concluded he could not take the chance of putting him in an important place that to say the least required considerable manual efficiency on the part of a physically normal man (Transcript of Record, page 34, folio 33(b) *et seq.*).

We respectfully submit, there can be no flaw found in the conclusions of the lower Courts that in denying the Orangeburg job to Steadman, there was no evidence that the superintendent acted arbitrarily or in bad faith.

The petitioner apparently misconceives and misconstrues the holdings of the lower Courts and charges that they have found that Hare as superintendent had final and conclusive authority to determine petitioner's qualifications for the Orangeburg job. There has been no such finding. All that has been held is, that pursuant to the testimony and the provisions of the union agreement, Hare was the official charged with the duty initially of passing on Steadman's qualifications.

The position of the petitioner appears to be that the mere decision of the superintendent that a member of the brotherhood is not qualified to fill a position amounts to a breach of the contract and gives rise immediately to a right of action if the member possesses the requisite seniority.

The contract out of which the alleged right to recover arises recognizes seniority rights but limits them by setting forth: "Provided that in the exercise of seniority under this article, the **employee is qualified to hold the position.**" (Emphasis ours.) (Transcript of Record, page 30, folio 30.) Obviously, someone had to determine under the foregoing provision the matter of qualification, and the record is replete with evidence that Hare, the superintendent, and immediate superior of the petitioner, was the one to make the initial decision.

Plaintiff's position that the mere refusal to award a member of a brotherhood a position, in the absence of a showing of arbitrary and unfair action, constitutes a violation of the contract and warrants a suit for damages would play havoc with the very purpose and spirit of such contracts, which are devised for the purpose of amicable adjustment in the public interest of differences that might arise between employer and employee. Such contracts are entered into for the protection of all concerned, and in the absence of some showing on the part of petitioner that he was the victim of arbitrary and unfair treatment, he cannot complain that an adherence to the provision of the agreement constitutes a breach thereof.

The only cases remotely applicable cited here by the petitioner to sustain his position are *Moore v. Ill. Central R. R. Co.*, 112 F. (2d), 959, 965, 312 U. S., 630, 85 L. Ed., 1089; *Johnson v. Express Co.*, 163 S. C., 191, 161 S. E., 473, and *Rentschler v. Missouri, etc., R. R. Co.* (Neb.), 95 A. L. R., 1. In each of these cases there was evidence that the plaintiffs were discharged unfairly and in direct violation of their respective brotherhood contracts. (See 112 F. (2d), 962, as to Moore.) In the instant case all the petitioner can show is that he was denied the position at Orangeburg because the official, who under the union con-

tract was bound to make the initial decision, held that he was not qualified for the place. There is no holding in the lower Court that the petitioner was bound to exhaust his administrative rights under the contract before he could bring suit; but his failure to pursue the remedies that were available to him under the contract is more or less an incident in this case. The only construction that can be placed upon the decision of the Circuit Court of Appeals is that the normal processes inherent in and contemplated by the agreement in question were followed as far as the respondent was required, and in the absence of any denial of the rights guaranteed by the contract or of any evidence of arbitrary action or bad faith, there was no showing or breach of condition to support a cause of action.

In conclusion we submit that the plaintiff has utterly failed to sustain the allegations of his complaint that he was arbitrarily and unjustly denied the position of clerk-operator at Orangeburg or that he was denied a hearing in connection with the superintendent's refusal to give him that position.

It is further deferentially submitted that the petition for certiorari should be denied and the judgment of the United States Circuit Court of Appeals for the Fourth Circuit duly affirmed.

Respectfully submitted,

DOUGLAS McKAY,
DOUGLAS McKAY, Jr.,
Columbia, S. C.,
Counsel for Respondent.

THOS. W. DAVIS,
Wilmington, N. C.,
Of Counsel.